



## **CITY OF HAYWARD AGENDA REPORT**

Meeting Date 10/20/05

Agenda Item 1

**TO:** PLANNING COMMISSION

**FROM:** David Rizk, AICP, Senior Planner  
Andrew S. Gaber, P.E., Development Review Engineer

**SUBJECT:** Zone Change Application No. PL-2003-0656, Tentative Tract Map Application PL-2003-0659 (TTM 7478) – Oak Hills Enterprises/Clearbrook Partnership, Gil and Chris Zaballos (Applicants/Owners) - Request to change zoning from the Medium Density Residential (RMB3.5) District to a Planned Development (PD) District and to subdivide 6.3 acres to construct 30 townhomes

The undeveloped site is located north of Garin Avenue between Clearbrook Circle and Larrabee Street.

### **RECOMMENDATION**

Staff recommends that the Planning Commission find the project statutorily exempt from the California Environmental Quality Act, deny the zone change application and Preliminary Development Plan and deny the Vesting Tentative Tract Map application, subject to the attached findings.

### **BACKGROUND**

The proposed development involves one parcel and portions of two other parcels as identified below (see attachment A). The first parcel listed, which comprises the majority of the proposed tract, was not part of the original planned development.

- (1) an undeveloped 5.49-acre parcel located behind/east of the single-family homes along Larrabee Street that contains the main trace of the Hayward fault,
- (2) a portion of a 1.20-acre parcel that contains the segment of Clearbrook Circle that leads to the Oak Hills Apartments complex and
- (3) the western portion of the 14.50-acre parcel that contains the apartment complex.

The applicant is requesting to change the zoning of involved properties from Medium Density Residential (RMB3.5) to Planned Development (PD) to develop 30 townhomes. If approved, the proposal would amend the planned development associated with the Oak Hills Apartments development, in that approximately 0.9 acres of the western portion of that parcel would be part of a new planned development district associated with the currently proposed project.

Fourteen of the proposed townhomes would be located uphill and east of a proposed central private road, below Clearbrook Circle, with each three-story unit containing three bedrooms. The remaining 16 "downhill" units would be located along the west side of the private road and east of the earthquake fault zone, containing four bedrooms within two stories. Main access would be from Clearbrook Circle, with an emergency access road to Garin Avenue. Each unit would contain private decks and/or balconies. Two, centrally located group open space areas are also proposed.

Proposed grading would entail approximately 40,000 cubic yards of cut and fill, with approximately 33,000 cubic yards of material proposed to be imported in order to raise the ground level in the southwestern portion of the development.

Surrounding uses include single-family residences along Larrabee Street to the west and along Clearbrook Circle to the east, the 148-unit Oak Hills Apartment complex to the northeast, single-family homes and undeveloped steep areas located across Garin Avenue to the south and an undeveloped, former quarry site for which residential development is proposed (Garin Vista) located to the north.

## **DISCUSSION**

### **General Plan**

The developer proposes a project density of approximately 5.3 dwelling units per net acre. The General Plan Land Use Designation is Limited Medium Density Residential (8.7-12.0 dwelling units per net acre), which was created as a result of the Mission-Garin Area Annexation Study, completed in July of 2003.

### **Mission-Garin Area Special Design District (SD-5)**

Another outcome of the Annexation Study was the creation of the Mission-Garin Area Special Design District (SD-5). The SD-5 District was developed to further promote policies in the City's Hillside Design Guidelines, to limit the development potential of the area, to maintain areas of open space and to locate residential development away from areas of steep slopes and earthquake fault zones. Staff is of the opinion that the project, which will be the first project considered in the SD-5 district that entails development on natural slopes, is not consistent with the SD-5 provisions in that development is proposed in areas with natural slopes that exceed 25 percent. That standard states, "Development is not permitted within areas where natural slopes are generally greater than 25 percent." As shown on the submitted slope map in the plan set, units #1 through #14 encroach significantly into such areas, with approximately half of the areas of those lots located within the steep hillside below Clearbrook Circle. The slopes of such areas approach 50 percent. The applicant has indicated that removing units out of such areas would make the project economically infeasible. It should be noted, as indicated in Attachment F, that the average slope of the proposed development area is 15.41 percent.

The SD-5 provisions also contain limits on the number of dwelling units that can be constructed on properties within the special design district. Such numbers were derived based on the zoning designation and "developable" areas; i.e., those areas located outside fault setback zones and having

slopes less than 25 percent. The number of units indicated for the subject site is 13, plus an additional potential 12 units that were never built associated with the Oak Hills apartments development, for a total of 5 units less than what is proposed. The SD-5 provisions also indicate that the City Council may consider adjustments to the dwelling unit allocations for individual properties, "based on presentation of more detailed data, findings of site-specific environmental analyses, and or as a result of the application of the development standards..." Staff has conducted a detailed analysis of the slopes on the site and determined that 2.78 acres of the site contain slopes less than 25 percent and are located outside the earthquake fault zone (see attachment D). Applying the RMB3.5 zoning designation density to such areas yields a dwelling unit count of 34.6 units, which would allow for the number of units proposed.

Findings required to approve a Zone Change, Planned Development and Tentative Tract Map include a finding of consistency with the General Plan and Zoning Ordinance and all applicable, officially adopted policies and plans. Because the project fails to comply with a key provision of the SD-5 District, staff believes this finding cannot be made. While staff is of the opinion that the proposed project is attractive and would generally comply with other standards and policies, it cannot support the project due to encroachment into areas with natural slopes that exceed 25 percent. Other aspects of the project are summarized below.

#### Inclusionary Housing Ordinance

In June 2003, the City Council adopted an Inclusionary Housing Ordinance which requires any development of 20 or more units to provide units affordable to low and moderate-income households. Because the ordinance took effect on January 1, 2004, and the application was deemed complete on December 30, 2003, the project is not subject to the ordinance.

#### Architecture

In staff's opinion, the architectural style and design of the buildings is attractive and consistent with the City's design guidelines and intent. The proposal includes two types of townhouse units. Units #1 through #14 ("Unit A") are considered "uphill" units, located in three separate buildings east of the central private road serving the complex. The units would "step up" and into the hillside located below Clearbrook Circle (see sheet 4 of the architectural plans) and the units would be staggered to have varying front elevation planes, which will help reduce the visual massing of the structures. The units include three stories totaling 1,700 square feet with a 400 square foot, standard two-car garage and entry on the ground floor, the main living area on the second floor and bedrooms on the third floor. The main living area includes a great room, half-bath, kitchen and ground-level rear patio and front balcony. The top floor includes three bedrooms, including a master bedroom suite.

As depicted in the visual simulations showing views within the development, the architectural style of the units is proposed to be contemporary with a stucco exterior painted a medium-toned brownish gray, with an off-white colored trim and related bands below the roof eaves and balconies. Roofs are proposed to be hipped, surfaced with dark brown composition shingle. Stucco stone is proposed on the wall surface along the ground floor elevation, proposed to wrap around the end units at the rear of the second floor level. An open two-story alcove over the entries would allow sunlight to highlight the front entry doors. Second story balconies proposed over garages will help break up the

visual massing of the three story elements. Gabled dormers along the ends and at the rear of the buildings, "pop-outs" along the end walls, as well as wood trellises proposed over the rear patios, would further help reduce the bulk of the structures. Staff is concerned with the lack of sunlight that would be afforded the rear of these uphill units, especially units #1 through #4, given their east-facing orientation and the slope and associated retaining walls proposed along the rear of most of the patios (see sheet 2 of 4 of the engineering drawings).

The remaining 16 units ("Unit B") are shown west of the central road in four separate buildings and are considered "downhill" units in that they "step down" the hill, which would provide views toward the west and Bay (see sheet 5 of the architectural drawings). The units consist generally of two stories and include 2,210 square feet of living area, plus a 400 square foot, two-car garage. The ground/entry level includes the garage, entry way, half bath and a fourth bedroom or office. Such area "steps down" into the main living area, which includes the kitchen, great room with fireplace and a patio that will provide residents with excellent views toward the Bay. The upper floor is comprised of the master bedroom suite, two bedrooms with a full bath and the laundry facility.

The architectural style of the downhill units is similar to that of the uphill units, with a stucco exterior that would be painted a medium brown color. A narrow band around the base of the buildings would be brown stucco stone, with a more formal look than that used on the uphill units. As with the uphill units and as shown on sheet 1 of the architectural plans, the downhill units are proposed to be "staggered" with varying front and rear elevation planes, which would help break up the massing of the structures. The most visible elevation from off-site would be the west-facing rear elevation of the downhill units. The proposed trellises over the rear patios and the fact that the patios would be at grade level will help them appear to be subordinate and integrated into the overall building design, rather than appear to be visually detached as separate elements. The roof elements along the rear elevations are broken up with varied sections and features.

As shown on sheet 2 of the architectural drawings, the heights of the townhomes as measured from existing grade to the midpoint of the roof conform to the maximum building height standard of 40 feet. The heights range from approximately 25 feet for the downhill units to 33½ feet for the uphill units, as measured from finished grade.

#### Geotechnical issues

The project would entail dwelling units proposed up to the minimum 50-foot setback from the Hayward earthquake fault trace. Also, fill is proposed up to 20 feet in depth in certain portions of the site, to raise the ground elevation to approximate that level in the northern portion of the site, created partially by fill that was imported to the site when the adjacent Oak Hills Apartment complex was developed. Also, a subsurface drainage pipe that crosses the fault trace and carries water from the adjacent watercourse to the east by Clearbrook Circle to a stormdrain pipe that runs to Larrabee Street is proposed to be relocated, to direct water through the southern portion of the site out to Garin Avenue. Concerns with any development proposed on this site have been expressed in the past by residents along Larrabee Street. Some of those properties have experienced ground movement or creep that has caused damage to properties.

Geotechnical reports have been prepared addressing such issues, and the project geotechnical engineer has concluded the proposed project is feasible, provided certain measures are implemented during construction. Such measures include removing uncompacted fill and replacing it with an engineered slope with keyways and benches, along with installation of drainage features to direct water away from the slope. Staff has not conducted an environmental analysis, since it is recommending denial of the project.

### Open Space

The standards for multi-family projects require a minimum of 350 square feet of usable open space for each dwelling unit, 100 square feet of which is to be provided in group open space. Therefore, at least 10,500 square feet of open space is required for this project, and a minimum of 3,000 square feet of group open space is required. The applicant is proposing two centrally-located group open space areas that would total 3,000 square feet: a 1,750 square foot barbeque/picnic area and a 1,250 square foot tot lot. However, since portions of the picnic area exceed 5% slope, they would not count as usable open space as currently designed.

For private open space to be considered usable, per the Zoning Ordinance, a minimum of 100 square feet with minimum 10-foot dimension must be provided for ground-level private open space areas and a minimum of 60 square feet with a minimum dimension of 6 feet provided for balconies. Also, private open space areas cannot be located over driveways or in front yard setbacks. Excluding the balconies proposed over the driveways in the uphill units, each uphill unit has a rear deck/balcony that would count as 230 square feet (115 times 2), since the area is permitted to be doubled in order to meet open space requirements. Downhill units would have private rear decks that would count at 720 square feet each (360 times 2).

In summary, a minimum total of 13,500 square feet of open space is required and a total of 17,740 square feet of open space is proposed for this project.

### Parking

The project is required to provide 63 parking spaces, 7 of which must be reserved for guest parking. The project provides for a total of 78 spaces, 60 of which are within garages and the remaining 18 located along the private central street. Eight visitor spaces are indicated.

### Tentative Tract Map

The proposed tract does not include areas of the existing parcel in the southwest corner of the site. Staff would suggest that such area, located along Garin Avenue in the steeper southwestern portions of the site, be included within the tract map boundary, so that maintenance could be incorporated into homeowners' association responsibilities. This area would not include the land adjacent to Clearbrook Circle where landscaping associated with the Clearbrook development to the east and signage for the Oak Hills Apartment complex exists.

## ENVIRONMENTAL REVIEW

A Program Environmental Impact Report (EIR) was certified in July of 2003 for the Mission-Garin Area Annexation Study assessing potential significant environmental impacts associated with a range of development scenarios in the Mission-Garin Annexation Study area at a general, programmatic level. The subject property is within that study area. The Program EIR indicates that project-specific impacts are to be assessed at time individual development projects are considered. However, because staff is recommending denial of the project, an analysis of project impacts has not been conducted. The proposed project is Statutorily Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270, *Projects which are Disapproved*. Should the Commission desire to recommend approval of the project, staff will return to the Commission with an environmental document for consideration.

## PUBLIC NOTICE

On November 18, 2003, a notice of preliminary meeting was mailed to every property owner and occupant within 300 feet of the subject site, including within 300 feet of the Oak Hills Apartment Complex parcel, as noted on the latest assessor's records. Notice was also provided to the *Fairway Park Neighborhood Association and the Mission-Garin Neighborhood Plan Task Force* members, as well as local, regional and State agencies.

On December 4, 2003 a preliminary tentative tract map meeting was held and attended by several neighborhood residents. After notices were again mailed on December 5, 2003, a second preliminary tentative tract map meeting was held on December 11, 2003, to allow the applicant to attend with the neighbors. Downhill residents along Larrabee Street expressed concerns at both meetings with development on the hill above their homes and possibly exacerbating hillside movement that could impact their properties.

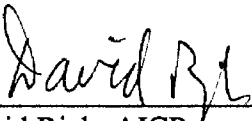
On October 7, 2005, a Notice of Public Hearing was mailed to owners and residents within 300 feet of the project site and published in *The Daily Review*. At the time of completion of this report, staff had received one response from a Fairway Park neighborhood resident in opposition to the project.

## CONCLUSION

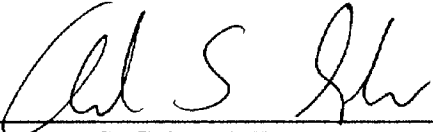
In staff's opinion, the project as a whole is attractive. However, due to encroachment of proposed development in areas that exceed 25 percent natural slope, staff recommends denial of the project as proposed.

If the Planning Commission agrees with staff and denies the application, the applicant may appeal the decision to the City Council. Otherwise, a new application with a substantially different plan may be submitted at any time. However, if the Planning Commission determines the project as presented should be approved, staff would conduct CEQA review and prepare findings and conditions in support of the project, which the Commission would then review.

Prepared by:



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Attachments:

- A – Area map
- B – Findings for denial of Zone Change and Preliminary Development Plan
- C - Findings for denial of Vesting Tentative Tract Map
- D - Developable areas
- E - Aerial view of project site, viewed from the south
- F – Average slope calculation of developable area

**DUE TO THE COLOR OF  
ATTACHMENT A, IT HAS BEEN  
INCLUDED AS A SEPARATE LINK**



**CITY OF HAYWARD  
PLANNING DIVISION  
ZONE CHANGE DENIAL**

October 20, 2005

**ZONE CHANGE APPLICATION NO. PL-2003-0656: Oak Hills Enterprises/Clearbrook Partnership, Gil and Chris Zaballos (Applicants/Owners)** – Request to change zoning from the Medium Density Residential (RMB3.5) District to a Planned Development (PD) District and to subdivide 6.3 acres to construct 30 townhomes

The undeveloped site is located north of Garin Avenue between Clearbrook Circle and Larrabee Street.

***Findings for Denial – Preliminary Development Plan:***

- A. Denial of Zone Change Application No. 2003-0656, is Statutorily Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270, *Projects which are Disapproved.*
- B. The development does not conform to the provisions of the Mission-Garin Area Special Design District (SD-5) in that approximately one-third of an acre of development is proposed within natural slopes that exceed 25 percent, with such slopes approaching 50 percent. Such provision was established to minimize development in areas with significant development constraints.

***Findings for Denial – Zone Change:***

- C. The proposed change is not in conformance with the purposes of the Mission-Garin Area Special Design District (SD-5) in that approximately one-third of an acre of development is proposed within natural slopes that exceed 25 percent, with such slopes approaching 50 percent. Such provision was established to minimize development in hillside areas with significant development constraints.

**FINDINGS FOR DENIAL  
VESTING TENTATIVE TRACT MAP 7478**

The State of California Subdivision Map Act, Government Code Section 66474<sup>1</sup>, states the grounds for denial of a tentative map. The proposed vesting tentative tract map can be denied based on the following findings:

1. The site is not physically suitable for the proposed density of development, since over one-third of an acre of development is proposed to encroach into areas with natural slopes that exceed 25 percent and approach 50 percent.

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<sup>1</sup> The findings of Section 66474 set forth the grounds for denial of a tentative map which are as follows:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property with the proposed subdivision.

**DUE TO THE COLOR OF  
ATTACHMENTS D, E, AND F, THEY  
HAVE BEEN INCLUDED AS  
SEPARATE LINKS**